

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1273 of 2007

Manikandan

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary
Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The District Collector
and District Magistrate
Nagapattinam District
Nagapattinam.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.Ponpandiyan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Rajaram, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the petitioner, who is the son of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detenu before this Court, now confined in Central Jail, Trichy, and to call for the records of the respondents relating to the order of detention

vide proceeding COC No.37/2007, dated 26.7.2007, to set aside the same and to set the detenu at liberty.

3.1. The order of detention dated 26.7.2007 was passed on the basis of ground case in Crime No.419 of 2007 for alleged commission of offences under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 14.7.2007, the Inspector of Police, Perambur Police Station, on specific information that the detenu was selling poisonous illicit arrack, proceeded on a prohibition raid, found the detenu selling illicit arrack and apprehended him. The contraband was seized. The samples of arrack seized were sent for chemical analysis and the report reveals that it contains 7.5 mg% w/v of atropine, a poisonous substance and consumption of the arrack mixed with atropine would be fatal to life.

3.2. Apart from the above, the detaining authority also took note of two adverse cases pending against the detenu, viz., Crime No.124 of 2006 on the file of Perambur Police Station for the offence under Section 4(1)(aa) read with 4(1-A) of the Tamil Nadu Prohibition Act; and Crime No.501 of 2007 on the file of Mayiladuthurai Prohibition Enforcement Wing for the offence under Section 4(1)(aaa) read with 4(1-A) of the Tamil Nadu Prohibition Act and Rules 5 and 6 of the TNRS Rules, 1959.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The learned counsel for the petitioner challenges the order of detention on the ground of non-application of mind on the part of the detaining authority to the fact that while the the First Information Report was itself registered only at 1100 hours on 14.7.2007, the observation mahazar furnished along with the grounds of detention is found to be prepared even prior to the registration of the first information report, viz., at 0830 hours on 14.7.2007.

6. From the materials available on record, as contended by the learned counsel for the petitioner, it is evident that the the First Information Report was registered only at 1100 hours on 14.7.2007. However, the observation mahazar, which has to be prepared during the course of investigation, viz., after the receipt and registration of the first information report is found to be prepared even prior to the registration of the first information report, viz., at 0830 hours on 14.7.2007. There is no explanation on the part of the detaining authority as to how the observation mahazar was prepared even prior to the

registration of the first information report. The failure on the part of the detaining authority to get an explanation on this aspect vitiates the order of detention.

For the aforesaid reason, the petition is liable to be allowed and hence, the same is allowed. The order of detention dated 26.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in any other crime. No costs.

sasi

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

- 1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Secretariat, Chennai-9.
- 2.The District Collector
and District Magistrate
Nagapattinam District
Nagapattinam.
3. The Superintendent,
Central Prison, Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort Saint George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

SCD(CO)
dcp/4.12

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